

August 1, 2005

Civil Division-Kent County (739-7641)

Mr. Daniel J. Kramer
8041 Scotts Store Road
Greenwood, DE 19950

Re: **Freedom of Information Act Complaint
Against Woodbridge School District**

Dear Mr. Kramer:

On June 20, 2005, our Office received your complaint under the Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA"), alleging that the Woodbridge School District ("the School District") violated FOIA by holding a special meeting on June 13, 2005 without explaining in the agenda why the School District could not give the normal seven days notice.

By letter dated June 23, 2005, we asked the School District to respond to your complaint within ten days. We granted the School District's request for a brief extension of time to accommodate the vacation plans of the School District's counsel. We received the School District's response on July 15, 2005.

According to the School District, the notice and agenda for the June 13, 2005 special meeting was posted five days in advance on June 8, 2005. The School District acknowledges that

the notice “did not contain an explanation as to why the meeting was being held with less than 7 days notice” as required by FOIA.

There were two categories of public business on the agenda for the June 13, 2005 special meeting: (1) the bid results and bid recommendation for an in-town bleacher project; and (2) personnel (initially discussed in executive session, and then voted on in public session). The minutes of the June 13, 2005 special meeting show that the School District unanimously approved four personnel actions,¹ and unanimously voted “[t]o recommend the Southern Bleacher Company for the bleacher project at \$229,100.”

The School District contends that it has voluntarily remediated any FOIA violation associated with the June 13, 2005 special meeting by re-noticing those matters of public business for discussion and approval at later meetings.

On June 14, 2005, the School District posted the notice and agenda for a regular meeting to be held on June 21, 2005, seven days in advance as required by FOIA. The agenda listed for “Action” under Item X. “Personnel.” The minutes of the June 21, 2005 meeting show that the School District reconsidered the four personnel matters which it had approved at the special meeting on June 13, 2005 and unanimously voted to approve them.

The agenda originally posted for the June 21, 2005 meeting did not mention the bleacher project. The minutes show that the School District amended the agenda during the June 21, 2005 meeting to add two new matters for public discussion: “Bid Results – In Town Bleacher Project”;

¹ The School District approved the employment of Lee Olmstead as Business Education Teacher; approved extra days for six individuals; approved the employment of Sara Carson as Part-Time Temporary Clerk; and approved the employment of Tim Capone as Assistant Principal.

and “Approval – In Town Bleachers.”² The minutes state that “[t]he low bid from Southern Bleacher Company in the amount of \$229,100 was received. We are recommending formal approval of this contract from the Board.”

Apparently because of concerns raised by the School District’s counsel, the School District did not vote to award the bleacher project contract at the June 21, 2005 meeting, but deferred that vote until the next meeting of the School District.

On June 28, 2005, the School District noticed a meeting to be held on July 5, 2005 seven days in advance as required by FOIA. The agenda for the July 5, 2005 meeting listed for action “Bid Approval for the In Town Bleacher project.” The minutes of the July 5, 2005 meeting show that the School District voted unanimously “[t]o approve the Souther Bleacher Company in the amount of \$229,100 for the in-town bleacher project.”

Relevant Statutes

FOIA requires that “[a]ll public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof.” 29 *Del. C.* §10004(e)(2). For a special meeting, FOIA allows for notice to be given “as soon as reasonably possible, but in any event not later than 24 hours of such meeting.” *Id.* §10004(e)(3). “The public notice of a special . . . meeting shall include an explanation as to why the notice

² FOIA authorizes a public body to amend the agenda “to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body’s meeting.” 9 *Del. C.* §10004(e)(2). Arguably, the matter of the bleacher project “arose” at the time of the June 21, 2005 meeting – as reflected in the minutes – in response to “correspondence from our attorney concerning a Freedom of Information Act (FOIA) complaint regarding the June 13, 2005 agenda.”

required by paragraph (1) of this subsection [seven days] could not be given.” 29 *Del. C.* §10004(e)(3).

Legal Analysis

The School District acknowledges that the notice for the June 13, 2005 “special meeting did not state an explanation why seven-days’ notice could not be given. We find therefore that a technical violation of FOIA occurred.” *Att’y Gen. Op.* 04-IB01 (Jan. 28, 2004). The issue then is whether to require remediation.

In *Att’y Gen. Op.* 04-IB01, we determined that the city council violated FOIA because “the notice of the November 20, 2003 special meeting did not state an explanation why seven-days’ notice could not be given.” But we did “not believe that any remediation is required because the City Council met on December 22, 2003 and lifted the moratorium adopted at the special meeting on November 20, 2003. . . . Under the circumstances, remediation would not serve any purpose at this time.”

In *Att’y Gen. Op.* 01-IB02 (Jan. 30, 2001), we determined that the town council violated FOIA by not including in the public notice of a special meeting an explanation why seven days’ notice could not be given. We did not direct remediation because “[w]e find that the Town cured that defect by ratifying the action taken on December 23, 2003 at the meeting of the Town Council on January 4, 2001.”

We believe that the School District remediated the agenda violation for the June 13, 2005 special meeting by re-noticing the matters of public business approved at the June 13, 2005 meeting for discussion and approval at meetings on June 21 and July 5, 2005, both of which meetings were

Mr. Dennis J. Kramer
August 1, 2005
Page 5

noticed to the public in accordance with FOIA. We do not believe that any further remediation is required for the initial FOIA violation.

We note, however, that in *Att’y Gen. Op.* 04-IB05 (Feb. 24, 2004), the School District committed a similar violation by amending the agenda prior to a meeting but not stating “the reasons for the delay in posting.” 29 *Del. C.* §10004(e)(5). In that case, we commended “the School District for taking steps to cure a FOIA violation before being instructed by this Office to do so.” While we continue to appreciate the School District’s recognition of its obligations under FOIA and its responsible action in addressing this matter promptly, we caution the School District to comply with the public notice requirements of FOIA in the future.

Mr. Dennis J. Kramer
August 1, 2005
Page 6

Conclusion

For the foregoing reasons, we determine that the School District violated the open meeting requirements of FOIA by not giving an explanation in the agenda for the special meeting on June 13, 2005 why seven days' notice could not be given to the public. Because the School District has already cured that violation, we do not believe that any further remediation is necessary.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

APPROVED

Malcolm S. Cobin, Esquire
State Solicitor

cc: The Honorable M. Jane Brady
Attorney General

James D. Griffin, Esquire

Lawrence W. Lewis, Esquire
Deputy Attorney General

Phillip G. Johnson
Opinion Coordinator